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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF CALIFORNIA et al.;

Defendants.

Case No. 2:18-cv-00490-JAM-KJN

JOINT STATUS STATEMENT

Judge: Honorable John A. Mendez
Action Filed: March 6, 2018

1 The parties file this joint status statement pursuant to the Court’s Order Granting the United
 2 States of America’s Motion to Stay Proceedings Pending Appeal (ECF No. 214), which directs
 3 the parties to include in the statement specific proposals as to how the parties wish to proceed
 4 with the case in light of the Ninth Circuit’s order.

5 **I. PLAINTIFF’S POSITION**

6 The United States believes that the Court should continue the stay currently in place at least
 7 until October 24, 2019, the date by which either party must file a petition for certiorari. The
 8 United States is currently evaluating whether to file a petition for certiorari.

9 On April 18, 2019, the Ninth Circuit affirmed in part and reversed in part this Court’s order
 10 on the United States’ motion for preliminary injunction. *United States v. California*, 921 F.3d 865
 11 (9th Cir. 2019). Specifically, the Ninth Circuit held that Cal. Gov’t Code § 12532(b)(1)(C),
 12 requiring review of the circumstances surrounding the apprehension and transfer of immigration
 13 detainees, likely violates the doctrine of intergovernmental immunity because it places a greater
 14 burden on the federal government than on local entities and remanded the case for this Court to
 15 apply the *Winter* factors to determine whether a preliminary injunction of that provision is
 16 warranted. *Id.* at 884-85.

17 This Court’s reasoning in its order staying district court proceedings pending resolution of
 18 the Ninth Circuit appeal equally applies to a stay of the case pending a determination on seeking
 19 certiorari: just as the Ninth Circuit did indeed “measurably alter the posture of this case” by
 20 reversing this Court’s holding that Cal. Gov’t Code § 12532(b)(1)(C) did not violate the
 21 intergovernmental immunity doctrine, if the parties seek certiorari, there is a live possibility that
 22 the Supreme Court would alter the posture of this case further, and provide ultimate clarification
 23 of issues, including whether other claims the court dismissed in its order on the motion to dismiss
 24 should not have been dismissed. Stay Op., ECF 214, at 3. Indeed, the Ninth Circuit’s order has
 25 already altered the contours of this case, requiring this court to revisit its conclusions in its orders
 26 on the motions to dismiss and for a preliminary injunction as to the United States’ claims
 27 concerning AB 103.
 28

1 Given the shifting contours of this case since it was last before the district court, the need to
2 revisit the court's holdings in its prior orders on AB 103, and the possibility of further review
3 which could alter the contours of this case further, any further proceedings at this time could
4 result in the same hardship and judicial inefficiency the court recognized in its stay order. *See*
5 Stay Op., ECF 214. And that is especially true about any discovery pending possible Supreme
6 Court review. Continuing the stay until October 24, 2019, or after the Supreme Court has made its
7 final determination in the case should certiorari be sought or granted, would not prejudice
8 Defendants, as they did not pursue appeal of this Court's preliminary injunction of the provisions
9 of AB 450 that fine private entities for cooperating with federal immigration enforcement, Cal.
10 Gov't Code §§ 7285.1 & .2, and participating in e-Verify, Cal. Lab. Code § 1019.2(a) & (b). They
11 thus affirmatively chose to accede to, and cannot claim harm from, this Court's preliminary
12 injunction of it during the litigation. And while the judgment in their favor has been partially
13 reversed, there is no injunction preventing the execution of AB 103. Therefore, the United States
14 respectfully requests that this case remain stayed pending any further review from the Supreme
15 Court.

16 In addition, the United States does not believe that proceeding with discovery at this time is
17 appropriate. Most of the issues in this case are legal issues, not needing factual discovery. The
18 Ninth Circuit has now held that the government is likely to succeed on the merits of its claim with
19 respect to AB 103 that the State's review of the circumstances surrounding an immigration
20 detainee's apprehension and transfer violated the intergovernmental immunity doctrine.
21 *California*, 921 F.3d at 884-85. That is in addition to this court's conclusion that the government
22 is likely to succeed on the merits of its claim that the provisions of AB 450 that fine private
23 entities for cooperating with federal immigration enforcement, Cal. Gov't Code §§ 7285.1 & .2,
24 and participating in e-Verify, Cal. Lab. Code § 1019.2(a) & (b), also violated the
25 intergovernmental immunity doctrine. The Court has dismissed all other claims. Accordingly,
26 because the Ninth Circuit has rendered the Court's order on the motion to dismiss invalid in its
27 current form, that order will need reconsideration. Defendants may need to file an answer on
28

1 some issues for which it originally filed a motion to dismiss. Therefore, this Court should decline
2 to order discovery in this case until those issues have been satisfactorily resolved.

3 In the alternative, if this Court were to proceed with the case notwithstanding the judicial
4 inefficiencies and potential hardships to the parties of doing so pending further review, the United
5 States proposes the following schedule:

6 **August 19, 2019:** Deadline for the United States' supplemental briefing on the preliminary
7 injunction factors regarding AB 103 and how the Ninth Circuit's decision impacts the
8 Court's order on the motion to dismiss.

9 **September 9, 2019:** Deadline for Defendants' supplemental response.

10 **September 23, 2019:** Deadline for the United States' reply.

11 **Within 30 days of any final decision on the preliminary injunction, the Ninth Circuit's**
12 **decision's impact on the motion to dismiss, and any judgment on the pleadings:** parties shall
13 propose a schedule for further proceedings, including discovery and dispositive motions.

14 **II. DEFENDANTS' POSITION**

15 On April 18, 2019, the Ninth Circuit largely upheld the district court's July 5, 2018 order
16 denying in part and granting in part the United States' motion for preliminary injunction.¹ *United*
17 *States v. California*, 921 F.3d 865 (9th Cir. 2019). The Ninth Circuit, however, reversed the
18 district court's denial of a preliminary injunction as to one provision of Assembly Bill (AB) 103,
19 California Government Code section 12532(b)(1)(C). That provision requires the California
20 Attorney General's review of county, local, or private locked detention facilities in which
21 noncitizens are being housed or detained for purposes of civil immigration proceedings in
22 California to include "[a] review of the circumstances around [detainees'] apprehension and
23 transfer to the facility." *Id.* at 885. With regard to this provision, the Ninth Circuit "encourage[d]
24 the district court to reexamine the equitable *Winter* factors in light of the evidence in the record."
25 *Id.* at 894. On July 5, 2019, the Ninth Circuit issued its mandate to the district court. ECF 217.
26 Plaintiff has not sought to stay that mandate.

27 _____
28 ¹ The United States' petition for rehearing en banc was denied on June 26, 2019 and the
Ninth Circuit's mandate issued on July 5, 2019.

1 In addition, the Court preliminary enjoined California Government Code Sections 7285.1
2 and 7285.2, and California Labor Code Section 1019.2, added by AB 450, on July 5, 2018. ECF
3 No. 193; *see also* ECF 197 (partially denying Motion to Dismiss as to AB 450). These AB 450
4 provisions have remained enjoined as the Court stayed proceedings on October 18, 2018, pending
5 disposition of Plaintiff's appeal to the Ninth Circuit. *See* ECF No. 214.

6 In light of the Ninth Circuit's opinion, the State of California is prepared to brief the
7 equitable *Winter* factors with respect to the one AB 103 provision that was remanded to this
8 Court, California Government Code section 12532(b)(1)(C), based on the existing record in the
9 case.

10 California is also prepared to continue litigating AB 450 on the merits. The State continues
11 to suffer harm while part of AB 450 is preliminarily enjoined. Defendants' decision not to appeal
12 the Court's decision to preliminary enjoin certain aspects of AB 450 was not an "accession" to
13 indefinitely staying the case as to that law. Rather, the Court stated that a "more complete
14 evidentiary record" could affect its analysis of AB 450. *United States v. California*, 314 F. Supp.
15 3d 1077, 1098 (E.D. Cal. 2018). Defendants remain committed to presenting that record to the
16 Court and filing a dispositive motion after discovery is complete. Nothing in the Ninth Circuit's
17 decision interferes with the ability of the parties to proceed with litigating the provisions of AB
18 450 that remain in the case.

19 Employees throughout the State have a strong interest in the protections provided by AB
20 450 and a prompt determination of its validity, and the State has a strong interest in enforcing its
21 duly enacted laws. California, therefore, respectfully requests that this case proceed without
22 further delay and that the Court set the following case management schedule for initial
23 disclosures, discovery cut-off, expert witness disclosures, and the filing of dispositive motions.

- **August 9, 2019:** Deadline for initial disclosures
- **November 8, 2019:** Deadline for expert witness disclosures
- **December 6, 2019:** Deadline for supplemental and rebuttal expert disclosures
- **December 20, 2019:** Discovery completion date
- **January 24, 2020:** Plaintiff files dispositive motion
- **February 21, 2020:** Defendants file cross-motion and opposition to motion
- **March 13, 2020:** Plaintiff files opposition to cross-motion and reply in support of motion
- **March 27, 2020:** Defendants file reply in support of cross-motion
- **April 14, 2020 or another date convenient to the Court:** Hearing on both motions

Dated: July 15, 2019

Respectfully Submitted,

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